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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,334	08/23/2001	Joong Hyuck Auh	6181/0J707	9995

7590 01/29/2004

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New York, NY 10022

EXAMINER

GITOMER, RALPH J

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/938,334	<b>Applicant(s)</b> AUH ET AL.	
	<b>Examiner</b> Ralph Gitomer	<b>Art Unit</b> 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3-20, 22 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some    c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The amendment received 12/23/03 has been entered and claims 1, 2, 21, 23 are considered here. The amended title and new abstract are acceptable.

In view of the amendments to the claims and arguments presented, the rejection of record under 35 USC 112, second paragraph, is hereby withdrawn.

This application contains claims 3-20, 22, 24 drawn to an invention nonelected with traverse in Paper No. 5. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The rejection of record of claims 1, 2, 21, 23 under 35 USC 102(b) over Leonard is maintained.

Applicant's arguments filed 12/23/03 have been fully considered but they are not persuasive.

Applicants argue that Leonard discloses fractions obtained from hemocyte lysate OR plasma of insects whereas the present claims are directed to a sample comprising a mixture of plasma AND hemocyte lysate.

It is the examiner's position that the claims are drawn to a composition and one would immediately envision the presently claimed composition in view of the teachings of Leonard. Either or both or each of the lysate or plasma would be expected to have the same function as claimed. If each of the two components are known to have a particular activity, one would expect that both of the same two components would also have the same activity.

The rejection of record of claims 1 and 21 under 35 USC 102(b) over Asokan is maintained.

Applicant's arguments filed 12/23/03 have been fully considered but they are not persuasive.

Applicants argue that the claims are directed to fractions exhibiting phenoloxidase ACTIVITY whereas Asokan discloses the named enzyme is present in both hemocytes and plasma but does not state that the fractions have phenoloxidase ACTIVITY.

It is the examiners position that neither the reference nor the claims include any limitations toward a structure or chemical compound, only naming the compound in terms of its activity, phenoloxidase. The examiner does not distinguish between a composition called phenoloxidase and a compound having phenoloxidase ACTIVITY of no particular amount of activity and under no specified conditions. Present claim 23 is queried regarding the above arguments regarding how it further limits claim 2 from which it depends.

The rejection of record of claims 1, 2, 21, 23 under 35 USC 103(a) over the combination of Asokan in view of Ashida is maintained.

Applicant's arguments filed 12/23/03 have been fully considered but they are not persuasive.

Applicants argue that Ashida detects glucans at concentrations only higher than 0.1 ng/ml as presently claimed.

It is the examiner's position that present claim 2 states detecting glucans at concentrations as low as 20 pg/ml which reads on concentrations higher than 0.1 ng/ml.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (571) 272-0926. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Ralph Gitomer  
Primary Examiner  
Art Unit 1651

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RALPH GITOMER  
PRIMARY EXAMINER  
GROUP 1200